

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DARLENE MCCAFFREY, AS ADMINISTRATRIX OF THE
ESTATE OF PATRICK MCCAFFREY, DECEASED,

Plaintiff,

-against-

MILLENNIUM PIPELINE COMPANY, LLC,

Defendant.
-----X

08 CV 6917

JUDGE SULLIVAN

TRIAL BY JURY
DEMANDED

**ANSWER TO
COMPLAINT**

Defendant, MILLENNIUM PIPELINE COMPANY, LLC, answering the
Complaint by its attorneys, MALAPERO & PRISCO LLP, respectfully alleges as follows upon
information and belief:

ANSWERING THE ALLEGATIONS UNDER THE FIRST CAUSE OF ACTION:

1. Denies the allegations contained in the paragraph(s) designated as "1",
"18" and "21" of the Complaint and respectfully refers all questions of law to the Court at the
time of trial.
2. Denies having knowledge or information sufficient to form a belief as to
the allegations contained in paragraphs designated as "2", "8", "9" and "16" of the Complaint.
3. Denies having knowledge or information sufficient to form a belief as to
the allegations contained in paragraph(s) designated as "3" of the Complaint and respectfully
refers all questions of law to the Court at time of trial.
4. Denies each and every allegation contained in paragraphs(s) designated as
"4", "6", "7", "10", "11", "12", "13", "14", "15", "19", "20" and "22" of the Complaint.

ANSWERING THE ALLEGATIONS UNDER THE SECOND CAUSE OF ACTION:

5. Defendant repeats, reiterates and realleges each and every denial as to the allegations set forth in paragraphs "1" through "22", in response to paragraph "23" of the Complaint, with the same force and effect as if same were more fully set forth herein.

6. Denies each and every allegation contained in paragraphs(s) designated as "24" and "26" of the complaint.

7. Denies the allegations contained in the paragraph(s) designated as "25" of the verified complaint and respectfully refers all questions of law to the Court at the time of trial.

ANSWERING THE ALLEGATIONS UNDER THE THIRD CAUSE OF ACTION:

9. Defendant repeats, reiterates, and realleges each and every denial as to the allegations set forth in paragraphs designated as "1" through "26," in response to paragraph "27" of the Complaint, with the same force and effect as if same were more fully set forth herein.

10. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph designated as "28" of the Complaint.

11. Denies each and every allegation contained in paragraph "29" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

13. That the answering Defendant, pursuant to Section 1412 of the New York CPLR, alleges on information and belief, that if the Plaintiff sustained any injuries or damages at the time and place alleged in the Complaint, such injuries or damages was as a result of the culpable conduct and/or assumption of risk of the Plaintiff or the Plaintiff's decedent.

14. Should it be found, however, that the answering Defendant is liable to Plaintiff herein, any liability being specifically denied, then the answering Defendant alleges that if any damages are found, they are to be apportioned among the Plaintiff and Defendant

according to the degree of responsibility that each is found to have in the occurrence, in proportion to the entire measure of responsibility of the occurrence.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

15. Any past or future costs or expenses incurred, or to be incurred, by the Plaintiff for medical care, dental care, custodial care or rehabilitative services, loss of earnings or other economic loss that has been or may be replaced or indemnified, in whole or in part, from a collateral source as defined in Section 4545(c) of the Civil Practice Law and Rules shall not be recoverable from the answering Defendant and the amount of such damages will be diminished by the amount of the funds which Plaintiff has or may receive from such collateral source.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

16. That the Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

17. That if the liability of the answering Defendant, if any, does not exceed fifty percent (50%) of the liability assigned to all persons, if any, and then the liability of the answering Defendant, if any, for non-economic loss is limited pursuant to Article 16 of the New York CPLR.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

18. That the injuries or damages complained of were caused in whole or part by culpable conduct of the Plaintiff or the Plaintiff's decedent or the culpable conduct of others for whom the answering Defendant had no legal responsibility.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

19. That Plaintiff's decedent, PATRICK MCCAFFREY, failed to make use of or negligently used available safety devices.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

20. The answering Defendant asserts the "Recalcitrant Worker" defense.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

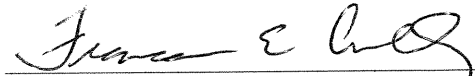
21. That the condition which allegedly gave rise to Plaintiff's decedent, PATRICK MCCAFFREY's death was "open and obvious" and not actionable as a matter of law.

WHEREFORE, Defendant, MILLENNIUM PIPELINE COMPANY, LLC, demands judgment dismissing the Complaint together with the reasonable costs and disbursements of this action including reasonable attorneys' fees and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
August 19, 2008

Yours etc.,

MALAPERO & PRISCO LLP



Francesca E. Connolly (FC2558)
Attorneys for Defendants
MILLENNIUM PIPELINE COMPANY,
LLC
295 Madison Avenue
New York, New York 10017
(212) 661-7300

To: David P. Kownacki (2601)
DAVID P. KOWNACKI, P.C.
Attorney for Plaintiff
420 Lexington Avenue
Suite Lexington Avenue
Suite 2031
New York, New York 10170
(212) 557-4190

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DARLENE MCCAFFREY, AS ADMINISTRATRIX OF THE
ESTATE OF PATRICK MCCAFFREY, DECEASED,

Plaintiff,

-against-

MILLENNIUM PIPELINE COMPANY, LLC,

Defendant.
-----X

08 CV 6917

**NOTICE TO TAKE
DEPOSITION UPON
ORAL EXAMINATION**

JUDGE SULLIVAN

C O U N S E L O R S :

PLEASE TAKE NOTICE, that pursuant to Rule 30 of the Federal Rules of Civil Procedure the testimony, upon oral examinations of Plaintiff, DARLENE MCCAFFREY, AS ADMINISTRATRIX OF THE ESTATE OF PATRICK MCCAFFREY, DECEASED, as an adverse party, will be taken before a notary public who is not an attorney, or employee of an attorney, for any party or perspective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, at the Offices of MALAPERO & PRISCO, LLP, 295 Madison Avenue, New York, New York 10017, on the 22nd day of October, 2008, at 10:00 in the forenoon of that day with respect to evidence material and necessary in the defense of this action: All of the relevant facts and circumstances in connection with the accident, including negligence, contributory negligence, liability and damages.

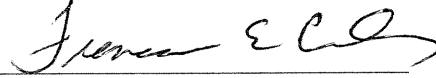
That the said person to be examined is required to produce at such examination the following:

Any and all reports, photographs, receipts, invoices, etc. relative to the above captioned cause of action.

Dated: New York, New York
August 19, 2008

Yours etc.,

MALAPERO & PRISCO LLP



Francesca E. Connolly (FC 2558)
Attorneys for Defendants
MILLENNIUM PIPELINE COMPANY,
LLC
295 Madison Avenue
New York, New York 10017
(212) 661-7300

To: David P. Kownacki (2601)
DAVID P. KOWNACKI, P.C.
Attorney for Plaintiff
420 Lexington Avenue
Suite Lexington Avenue
Suite 2031
New York, New York 10170
(212) 557-4190

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DARLENE MCCAFFREY, AS ADMINISTRATRIX OF THE ESTATE OF PATRICK MCCAFFREY, DECEASED, 08 CV 6917

Plaintiff,

**AFFIRMATION OF
SERVICE**

-against-

MILLENNIUM PIPELINE COMPANY, LLC,

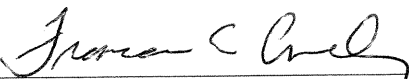
Defendant.
-----X

I, FRANCESCA E. CONNOLLY, declare under the penalties of perjury that I have served copies of the attached Answer and Notice for Deposition by Regular Mail on August 19, 2008 upon the following attorneys for the respective parties:

To: David P. Kownacki (2601)
DAVID P. KOWNACKI, P.C.
Attorney for Plaintiff
420 Lexington Avenue
Suite Lexington Avenue
Suite 2031
New York, New York 10170
(212) 557-4190

Dated: New York, New York
August 19, 2008

MALAPERO & PRISCO LLP

By: 
Francesca E. Connolly (FC2558)
295 Madison Avenue
New York, New York 10017
(212) 661-7300

*Attorneys for Defendant MILLENNIUM
PIPELINE COMPANY, LLC*